IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.3336 OF 2007
WITH
WRIT PETITION NO.3338 OF 2007

M/s.Hi-tech Farms & Foods
(Poona) Ltd. .. Petitioners
Versus
Parimal Jagannath Bhide & Ors. .. Respondents

Mr.P.K.Dhakephalkar, Senior Advocate with Mr.Manoj Mhambrey for petitioners
Mr.V.T.Walawalkar, Senior Advocate with Anil Subramanian for respondent No.1
Mr.A.K.Abhyankar, Senior Advocate with R.S.Patil for respondent No.4.

CORAM : S.C.DHARMADHIKARI, J.
DATE : 22nd November 2007.

P.C.

. This petition and W.P.No.3338 of 2007l are directed against the orders passed by the lower appellate court reversing that of the trial court and granting injunction in favour of the plaintiffs in Suit No.1243 of 2006.

2. The present petitioners had instituted civil suit No.1359 of 2006. However, the plaint in Regular Civil Suit No.1243 of 2006 proceeds on the basis that the plaintiffs therein are in possession of the suit property which is land admeasuring about 623 sq.mtr. more particularly described in para 1 of the plaint. Plaintiffs in that suit aver that the suit property was purchased out of the joint family funds by their father late Jagannath Mahadev Bhide. Particulars of sale in favour of their father are set out and it is pointed out that this sale deed is duly registered. Thereafter, a bunglow was constructed in the portion admeasuring 1250 sq.ft. after obtaining approval from the Pune Municipal Corporation. It is stated that father - Jagannath Bhide passed away on 26th August 1992 at Pune and mother Kamlabai also passed away on 31st July 1999. However, names of the plaintiffs in Regular Civil Suit No.1243 of 2006 are entered

in the property register card maintained by the City Survey office, Pune in respect of this property.

3. It is alleged therein that one Uttam Shinde defendant No.1 who is respondent to the present petition (respondent No.5) had allegedly some transaction with the father on the strength of which he claims, in May 2004, to be entitled to enter upon the property. However, all such transactions are denied inasmuch as there is a clear reference in the plaint to the disputes between the family members. There is no reference to any of the transactions between Uttam Shinde and late father Jagannath Bhide. However, the plaint proceeds on the basis that Uttam Shinde along with some persons forcibly entered into the bunglow and was interfering with the possession of the plaintiffs by breaking open the locks. There are criminal proceedings pending inasmuch as both Uttam Shinde and

Directors of the present petitioners are arrayed as accused therein. It is stated in para 10 of the plaint that on the strength of some forged and fabricated documents, defendant No.1 claims title to the property and has thus entered the property. A restraint order is claimed permanently against him from interfering with the possession of the heirs of late Jagannath Bhide.

4. This suit was filed on 28th August 2006.

5. Petitioners suit admittedly is a subsequent suit and was numbered as Suit No.1359 of 2006. Therein, the prayer is that petitioners' possession be protected inasmuch as the heirs of late Jagannath Bhide are disturbing and obstructing the peaceful possession in respect of the very same property. In this suit the averments and allegations are that on account of family disputes a suit was filed by the Jagannath Bhide being Reg.Civil Suit No.1623 of

1973 which was decreed on 17th April 1982 and the heirs were restrained from disturbing the possession and peaceful enjoyment by Jagannath Bhide. However, the wife of Jagannath Bhide, Kamlabai, who was mother of plaintiff in Suit No.1243 of 2006 was allowed to use and occupy one room pursuant to the order dated 28th November 1983 in Regular Civil Appeal No.425 of 1982, which was filed to challenge the decree in favour of Jagannath Bhide. Further, the petitioners placed on record documents being a Receipt of 21st September 1980, which has been termed as Visar Pavti and further "Tabe Visar Pavti" dated 15th December 1983. That is the document executed allegedly by late Jagannath Bhide and Uttam Shinde and based upon recitals therein, it is urged that Uttam Shinde has been in continuous possession of the property from the date Visar Pavti/possession receipt was executed and has been paying taxes to the Pune Municipal Corporation. It is urged that from 1980 to 2004

none of the heirs visited the suit property nor did they raise any objection to the same being dealt with by Uttam Shinde. It is in such circumstances that a Deed of Assignment is pleaded by Uttam Shinde in favour of present petitioner for Rs.54,50,000/- which has been paid from time to time and which deed is registered on 3rd June 2006. It is urged that on the strength of this deed of assignment and pursuant to the consideration thereunder petitioners have been put in possession of the suit property, which possession is evidenced by a writing executed by Pradip Walvekar on behalf of petitioner. It is in such circumstances and filing of the suit by the heirs and F.I.R. being lodged, the suit for permanent injunction for protection of their possession was instituted by the present petitioners on 26th September 2006.

6. Thus, Uttam Shinde is a common party to both suits. However, petitioners have joined the

heirs of J.M.Bhide as party defendants in their R.C.S.No.1359 of 2006. In both suits, Application for Interim Injunction was moved which was taken up for consideration together by the trial court. The trial court granted injunction in favour of present petitioners whereas refused identical prayers of the heirs. That led to filing of two civil appeals by the heirs one refusing interim injunction in their suit and other granting interim injunction in favour of petitioners in their suit. Miscellaneous Civil Appeals were also taken up for hearing together and by a common judgement, the lower appellate court has allowed the appeal of the heirs and vacated interim injunction in favour of present petitioners. At the same time it granted injunction in favour of the heirs of late Jagannath Bhide in the following terms:-

> "(1) Both appeals are allowed with costs;

(2) The impugned common order passed below Exh.5 in RCS No.1243/2006 and 1359/2006 is hereby set aside and application Exh.5 filed in RCS No.1359/2006 stands rejected;

(3) Application Exh.5 filed in RCS No.1243/2006 is allowed and the defendant No.1, his agents, his employees, assignees and nominees are hereby restrained from entering into the suit property or from causing obstruction to joint possession of the plaintiffs with defendant No.2 over the suit property till the final disposal of the suit."

7. The effect of this order is that present petitioners have no interim order in their favour, whereas, the heirs have a restraint order against Uttam Shinde and his Employees, Assignees

(which includes present petitioners) and nominees in the above terms. It is this order dated 12th April 2007, which has led to the filing of petitions under Article 227 of the Constitution of India by the plaintiff in Suit No.1359 of 2006.

8. I have heard Mr.Dhakephalkar, learned Senior Counsel for petitioners, Mr.Walawalkar learned Senior Counsel for original plaintiff in Suit No.1243 of 2006 and Mr.Abhyankar, learned Senior Counsel appearing for original defendant No.2 Vasant Bhide. Mr.Godbole appears for Uttam Shinde who has been impleaded as defendant in both suits and had filed Writ Petition Nos.6011 and 6021 of 2007.

9. Mr.Dhakephalkar, learned Senior Counsel would urge that the lower appellate court was in complete error in interfering with the reasoned order of the trial court at the interim stage.

He submits that the lower appellate court has completely misconstrued and misread the documents viz., Visar Pavti dated 21st September 1980. He submits that heirs were nowhere on the scene and merely because P.R.card mentions their names does not mean that they were in physical possession of the suit property. He submits that true and proper effect in law of the decree passed in favour of Jagannath Bhide is that heirs are excluded permanently from the suit property. That order has gained finality. Only life interest was created and that too in respect of one room in favour of late Kamalabai. It is in such circumstances, that it is inconceivable that the heirs are in physical possession of the property. If the heirs have not bothered to look after and maintain the property from the time the order passed against them in the suit instituted by their late father, then it is not possible to hold that each of the documents in favour of Uttam Shinde and the present petitioners have no

basis in law. When there is clear recital that Uttam Shinde being put in possession, then, reversing the order of the trial court has resulted in total miscarriage of justice. He submits that now the deed of assignment has also been nullified. In such circumstances and when physical possession is with the petitioner, the impugned order deserves to be quashed and set aside.

10. Mr.Godbole appearing for Uttam Shinde urges that it is false to state that he is an absconder. He is very much appearing in the trial court as also in the lower appellate court and has filed detailed affidavits. He has placed on record complete details of the transaction with the late Jagannath Bhide. He has also placed on record the receipt evidencing physical possession being handed over to him. In such circumstances, Uttam Shinde could have validly created a right in favour of the present

petitioners and he submits that the order of the lower appellate court be quashed and set aside at his instance as well.

11. Mr.Walawalkar, learned Senior Counsel appearing for the heirs urges that the lower appellate court was fully justified in interfering with the order of trial court because the trial court missed the vital aspects of the matter. Till 2006, none of the documents in favour of Uttam Shinde surfaced on record. Uttam Shinde never objected to the P.R.card showing names of the heirs as owners of the property. He may be paying taxes to the Municipal Corporation, but that aspect is not germane at this stage at all. He submits that even Uttam Shinde has stated on affidavit that he was out of Pune on account of business frequently. There is nothing on record to show that Uttam Shinde was in physical possession. That apart, he submits that when the document prima facie discloses that it

was just an agreement for sale in favour of Uttam Shinde by late Jagannath Bhide and no conveyance was ever executed in pursuance thereof either during the lifetime of Jagannath Bhide or even during the lifetime of his wife Kamalabai, mother of heirs, who has been named therein, then, it is inconceivable that Uttam Shinde is having any right, title or interest in the property. He submits that there is a partition suit filed by the mother which is pending. This partition suit is built in 1997 and if the mother was not in possession of the property, there was no occasion for her to have filed the suit. In such circumstances, Uttam Shinde was never put in exclusive possession of the property. There is serious dispute as to whether he could be said to be possessing any right inasmuch as the documents are fabricated and forged and criminal proceedings are pending. In such circumstances, the true effect of the order of injunction passed by the lower appellate court is nothing but a

status quo to be maintained by the heirs and additionally the heirs being agreeable to maintain it as such, then, no interference is warranted with the order of the lower appellate court.

12. Mr.Abhyankar has supported the reasonings of the lower appellate court.

13. My attention is invited to a judgement of the Supreme Court in the case of Rambhau Namdeo Gajre Vs. Narayan Bapuji Dhotra (Dead) through Lrs. reported in 2004 (8) S.C.C. 614.

14. With the assistance of the learned Counsel appearing for respective sides, I have perused the petitions and the annexures thereto, including the impugned order. Although, tentative and prima facie findings are rendered by the lower appellate court, Mr.Dhakephalkar would urge that they would have far reaching

effect considering the controversy and number of proceedings. At the outset, I wish to clarify that each of the observations of the trial court, lower appellate court and this Court are tentative and prima facie and shall not influence the outcome of the main proceedings in any manner whatsoever. Each of the suits, whether it be for partition or permanent injunction must be tried on its own merits and in accordance with law, uninfluenced by any of the observations.

15. After having perused the impugned order, I am of the view that the trial court had proceeded on the basis that physical possession of the property was with Uttam Shinde and he had created a deed of assignment in favour of present petitioners after which they were put in physical possession of the property. However, it would be of some interest to note that the affidavit which has been filed by Uttam Shinde in the trial court in the present suit has this is to state:-

"7. The contents of para 2 of written statement and Exh.5 under reply are not true and correct and they are not admitted by this defendant. Though it is correct that the names of the plaintiffs are entered in to the property card, it does not make them the owners, particularly when to the knowledge of the plaintiffs the facts are otherwise. Just because this defendant was ignorant of the need to record his name in the property card can not give any ownership to the plaintiff or defendant No.2. It is also absolutely wrong and false to say that the plaintiff and defendant No.2 are in possession of the suit property. In fact the complaints which the plaintiffs are agitating in the plaint establish beyond doubt that this defendant was in possession of the suit property as legal

occupier and that this defendant has transferred the possession as well as all his right, title and interest in favour of one M/s.Hi-tech Farms and Foods India (P) Ltd. The claim of the plaintiff as to possession is absolutely false and divergent to the facts as the possession was parted with by the late Jagannath Bhide unto this defendant during his life time in the year 1980 and confirmed on 15/12/1983 and therefore, the question of the plaintiffs or defendant No.2 being in possession does not arise.

"8. The contents of para No.3 of written statement and Exh.5 under reply are not true and correct and they are not admitted by this Defendant. The question of the Plaintiffs or Defendant No.2 claiming any possession in the suit property does not arise as the same was

in possession of this Defendant uninterrupted since 1983, adverse to the rights if any that the Plaintiffs or Defendant No.2, may claim to devolve unto them by death of late Jaganath Bhide, that too to the knowledge of the Plaintiffs and Defendant No.2, which is quite evident from the claim of the Plaintiffs that there was a complaint against this Defendant by the Plaintiffs and Defendant No.2 in the year 1994, in the legal right vested in this Defendant under the said Tabe Visar Pavties executed by late Jaganath Bhide in favour of this Defendant on 15.12.1983. The possession of this Defendant otherwise also becomes absolute particularly when there is nothing to show or prove beyond doubt that after the said complaint the Plaintiffs had got possession back from this Defendant. Since 1994, till 2006,

in the alternative the possession of this Defendant as a owner becomes absolute by adverse possession the same being uninterrupted since 1983.

9. The contents of paragraph No.4 of written statement and Ex.5 under reply are palpably false and not tenable at law as in fact the Plaintiff or Defendant No.2 was never in possession of the suit property since 1983, which is quite evident from the litigation between late Jaganath Bhide and Plaintiffs and Defendant No.2. The said allegations are totally wrong and false as the possession of this Defendant in the suit property was never disturbed since the first time this Defendant came in to possession of the suit property on 21.09.1980, when the first Tabe Visar Pavti was executed by late Jaganath Bhide in favour of this

Defendant. This Defendant was not party to any of the disputes alleged in this paragraph and the Plaintiff be put to the strict proof thereof; however, this Defendant states that none of the Plaintiffs or Defendant No.2 or deceased Kamlabai ever came to the suit property to disturb the legal possession of this Defendant. The Plaintiffs be put to strict proof of the said allegations.

10. The contents of paragraph No.5 of written statement and Ex.5 under reply are not true and correct and they are not admitted by this Defendant. The suit property was in possession of this Defendant, who used to be in and out of Pune for his business and this Defendant had intentions to develop the suit property and, therefore, he had overlooked the growth of the plants in

> the suit property. However, the same do not establish that the suit property was in possession of the Plaintiffs or Defendant No.2 or late Kamlabai. The Plaintiffs are alleging some litigation between the Plaintiffs and Defendant No.2 however this Defendant, who is the legal owner of the suit property is not a party to the said litigation and the Plaintiffs be put to strict proof as to the said litigation and the alleged allegations."

16. From a perusal of these statements, even at the prima facie stage, it is apparent that it is his absolute case that he is in physical possession of the property. In fact, he states that he was in possession of the property as legal occupier and that is how he has transferred the possession as well as his rights in favour of M/s.Hi-tech Food. He states that he was put in possession by late Jagannath Bhide in 1980 which

is confirmed on 15th December 1983 and that is how he proceeds to state in para 7. Curiously, the next para states that he claims possession adversely to the true owner since 1983. If this possession is adverse to the right of the true owner and of the heirs, then, it was not necessary for him to rely upon the Visar Pavti and the writing of 15th December 1983. Further, he states that the suit property was in his possession but he used to be in and out of Pune for his business. He had intentions to develop the property and, therefore, he overlooked the growth of the plants in the suit property. At no stage, there is a clear assertion that he was in physical possession all through out or that the possession followed the title created in his favour. Thus, alternative pleas are raised about being either an legal occupier or in legal possession. The plea of adverse possession is also raised. Prima facie, there is nothing to indicate that the late J.M.Bhide executed and

enforced the decree in his favour and ousted the heirs from the property.

17. It is in such circumstances that the lower appellate court relied upon the version of the plaintiff that till 2004 Uttam Shinde never came forward and asserted his right, title and interest in the property. It is only when the heirs had filed the criminal cases and complaints to the police that this version is placed on record. Uttam Shinde has not gone to the court asserting his right, title and interest on the strength of the decree passed against the heirs. The lower appellate court, therefore, prima facie was right in relying upon the version put forward by the heirs of the deceased Jagannath Bhide that their mother atleast was in possession and that fact is evident when she filed a suit for declaration of her share, partition and separate possession after the deceased died intestate. This aspect is clear if one peruses the order of

the lower appellate court. It has believed the version, at the prima facie stage, of the heirs in preference to that of the defendant No.1 and the present petitioners who claim to be his assignees. To my mind, when the property was admittedly belonging to Jagannath Bhide and he had during his lifetime filed some suit because of the disputes in the family, which decree confirmed that his wife had a life interest in some portion of the property, then, the wife being in possession her filing suit for partition and separate possession, its pendency and after her death one of the plaintiff in the present suit of the heirs, being transposed as plaintiff, is a factor which would support the theory of the heirs being in possession of the property. It is equally true that the property has been neglected. However, mere payment of property tax for some years by defendant No.1 is a fact which would not support him and his version of being in physical possession, at a prima facie stage. As

against the names of heirs being in P.R. Card and entry in that behalf in 1992 is a fact which would support the heirs. That apart, there is serious dispute with regard to the genuineness of the documents in favour of Uttam Shinde. There are criminal proceedings pending. There is also dispute with regard to the genuineness of the signatures of the deceased. In such circumstances, injunction in favour of the heirs of the deceased who have established some right in the property as against that of total strangers like present petitioners cannot be said to be improper, erroneous or ex facie illegal or perverse exercise of discretion by the lower appellate court.

18. The injunction as granted is really in the form of direction to the heirs to maintain status quo at site. Merely because, the injunction is granted in the suit of the heirs does not mean that their entitlement is

conclusively established and held to be proved. During the pendency of the suit for partition by their mother and despite her death it being pending so also Uttam Shinde producing some documents to which the deceased is allegedly a party means that the heirs also are obliged to maintain the status quo at site. It is not as if the rights to the property in question are finally settled. All findings and directions are interlocutory in nature and must continue till the proceedings come to an end. In the teeth of serious disputes and pendency of criminal proceedings, I do not see any reason to interfere with the order of the lower appellate court.

19. However, while dismissing each of these petitions, I proceed to record the undertaking of heirs given by Mr.Walawalkar and Abhyankar that they would maintain complete status quo at site, inasmuch as, they would not alienate, encumber, part with possession or create third party rights

in respect of the suit property till the hearing and final disposal of Regular Civil Suit No.1243 of 2006 and Regular Civil Suit No.1359 of 2006. Both suits would be taken up for hearing together.

20. At one stage, I suggested that even the suit filed by the deceased mother, being Special Civil Suit No.1342 of 1997 could be taken up along with these suits. However, the nature of the reliefs and the issue of jurisdiction was raised. To my mind, interest of justice would be sub-served if hearing of Special Civil Suit No.1342 of 1997 is expedited and concerned court is directed to dispose of the said suit within one year from today.

21. It would be open for parties to have the present suits heard and tried along with partition suit. Equally, it would be open for them to urge that evidence must be recorded first

in the partition suit so that no strangers have any chance of entering into the arena and, thereafter, recording of evidence in other suits can be commenced and concluded.

22. All such pleas and requests be considered by the trial court on their own merits and in accordance with law. It is once again clarified that all observations are tentative and prima facie in nature and shall not influence the trial court in all these suits. Petitions are dismissed.

23. Needless to state that maintenance of complete status quo by the heirs would mean that they will not undertake any demolition activity so also development work at site, but, undertake day to day maintainance or repairs, if necessary.

(S.C.Dharmadhikari, J)